

Exhibit

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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



D76085651

MILACRON, INC.

and

MILACRON ASSURANCE LTD.

Plaintiffs

vs.

THE FAIRCHILD CORPORATION

and

RHI HOLDINGS, INC.

Defendants/Third Party Plaintiffs

vs.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, et al.

Third Party Defendants

CASE NO. A0404162

JUDGE MARTIN

FILED
2007 NOV 23 A 10:27
CLERK OF COURTS
HAMILTON COUNTY, OHIO

**ANSWER AND JURY DEMAND
OF INDUSTRIAL INDEMNITY
COMPANY AND WESTCHESTER
FIRE INSURANCE COMPANY
TO SECOND AMENDED THIRD
PARTY COMPLAINT**

NOW COME Third Party Defendants Industrial Indemnity Company ("Industrial Indemnity") and Westchester Fire Insurance Company ("Westchester Fire"), by and through their attorneys, COHN BAUGHMAN & MARTIN and McCASLIN, IMBUS & McCASLIN, LPA, and for their Answer to the Second Amended Third Party Complaint of Third Party Plaintiffs, The Fairchild Corporation and RHI Holdings, Inc. state as follows:

The Parties

1. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

2. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

3. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

4. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

5. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

6. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

7. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

8. Paragraph 8 contains legal conclusions to which no response is required. To the extent a response is required, Industrial Indemnity and Westchester Fire admit the allegations of paragraph 8.

9. Paragraph 9 contains legal conclusions to which no response is required. To the extent a response is required, Industrial Indemnity and Westchester Fire admit the allegations of paragraph 9.

10. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

11. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

Jurisdiction and Venue

12. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph as they pertain to Third Party Defendants other than themselves. Industrial Indemnity and Westchester Fire admit that jurisdiction and venue are proper under Ohio law and deny the remaining allegations of paragraph 12.

Background

13. To the extent that paragraph 13 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

14. To the extent that paragraph 14 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

15. To the extent that paragraph 15 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

16. To the extent that paragraph 16 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

17. To the extent that paragraph 17 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

18. To the extent that paragraph 18 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

19. To the extent that paragraph 19 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

20. To the extent that paragraph 20 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

21. To the extent that paragraph 21 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

22. To the extent that paragraph 22 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

23. To the extent that paragraph 23 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

24. To the extent that paragraph 24 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

25. To the extent that paragraph 25 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

26. To the extent that paragraph 26 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

27. To the extent that paragraph 27 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

28. To the extent that paragraph 28 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

29. To the extent that paragraph 29 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

30. To the extent that paragraph 30 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

31. To the extent that paragraph 31 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

32. To the extent that paragraph 32 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

33. To the extent that paragraph 33 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

34. To the extent that paragraph 34 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

35. To the extent that paragraph 35 is narrative, no response is required. To the extent that a response is required, Westchester Fire admits the allegations of this paragraph based upon current knowledge and information.

36. To the extent that paragraph 36 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

37. To the extent that paragraph 37 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

COUNT ONE

Declaratory Judgment Against National Union

38(a) – (k). To the extent that paragraph 38 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

39. To the extent that paragraph 39 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

40. To the extent that paragraph 40 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

41. To the extent that paragraph 41 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

42. To the extent that paragraph 42 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

43. To the extent that paragraph 43 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

44. To the extent that paragraph 44 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

45. To the extent that paragraph 45 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

COUNT TWO

Declaratory Judgment Against Royal & SunAlliance

46(a) – (d). To the extent that paragraph 46 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

47. To the extent that paragraph 47 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

48. To the extent that paragraph 48 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

49. To the extent that paragraph 49 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

50. To the extent that paragraph 50 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

51. To the extent that paragraph 51 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and

Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

52. To the extent that paragraph 52 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

53. To the extent that paragraph 53 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

54. To the extent that paragraph 54 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

COUNT THREE

Declaratory Judgment Against The Hartford Insurance Company

55. To the extent that paragraph 55 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

56. To the extent that paragraph 56 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

57. To the extent that paragraph 57 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

58. To the extent that paragraph 58 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

59. To the extent that paragraph 59 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

60. To the extent that paragraph 60 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

61. To the extent that paragraph 61 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

62. To the extent that paragraph 62 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

63. To the extent that paragraph 63 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

COUNT FOUR

Declaratory Judgment Against Industrial

64(a) – (e). To the extent that paragraph 64 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire admit based upon current information that Industrial Indemnity issued policies JU9107132, JU9108125, JU9109059, JU9123654, and JU9126075. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to the remaining allegations of paragraphs 64(a) – (e), including allegations pertaining to the effective policy periods of these policies, and therefore deny the remaining allegations.

65. To the extent that paragraph 65 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

66. To the extent that paragraph 66 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

67. To the extent that paragraph 67 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

68. To the extent that paragraph 68 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

COUNT FIVE

Declaratory Judgment Against Westchester

69. To the extent that paragraph 69 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire admit based upon current information that Westchester Fire issued policy CUS200030. Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 69, including allegations pertaining to the effective policy period, and therefore deny the remaining allegations.

70. To the extent that paragraph 70 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

71. To the extent that paragraph 71 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire admit that Westchester has assumed responsibility for Industrial policies JU9107132, JU9108125, JU9109059, JU9123654, and JU9126075.

72. To the extent that paragraph 72 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

73. To the extent that paragraph 73 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

74. To the extent that paragraph 74 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

COUNT SIX

Declaratory Judgment Against ACE

75. To the extent that paragraph 75 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

76. To the extent that paragraph 76 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

77. To the extent that paragraph 77 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

78. To the extent that paragraph 78 is narrative, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire deny the allegations of this paragraph.

COUNT SEVEN

Declaratory Judgment Against TIG

79. To the extent that paragraph 79 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and

Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

80. To the extent that paragraph 80 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

81. To the extent that paragraph 81 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

82. To the extent that paragraph 82 contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

83. To the extent that paragraph 83 is narrative and/or contains legal conclusions, no response is required. To the extent that a response is required, Industrial Indemnity and Westchester Fire are without knowledge or information sufficient to form a belief as to their truth and therefore deny the allegations of this paragraph.

DEFENSES

FIRST DEFENSE

The Second Amended Third Party Complaint fails to state a claim against Industrial Indemnity and Westchester Fire upon which relief can be granted.

SECOND DEFENSE

Third Party Plaintiffs have failed to join all necessary and/or indispensable parties to this action.

THIRD DEFENSE

Third Party Plaintiffs, as the parties claiming insurance coverage under the alleged policies, have the burden of proving that they are insured under the alleged policies.

Absent such proof, there can be no recovery. Based on the facts developed to date, it appears that the Third Party Plaintiffs in this action are corporate entities that are not entitled to insurance coverage under one or more of the policies allegedly issued by Industrial Indemnity and/or Westchester Fire. Specifically, it appears that:

- A. Third Party Plaintiffs are not the Named Insured or a corporate successor to the Named Insured on one or more of the policies.
- B. Third Party Plaintiffs are not additional insureds under one or more of the policies and are not entitled to any rights under the policies.
- C. Third Party Plaintiffs were not assigned any right or interest under one or more of the policies and/or neither Industrial Indemnity or Westchester Fire ever consented to any such assignment.
- D. Third Party Plaintiffs are not entitled to any rights under one ore more of the policies allegedly issued by Industrial Indemnity and/or Westchester Fire by operation of law or otherwise.

FOURTH DEFENSE

Third Party Plaintiffs, as the parties claiming insurance coverage under the alleged policies, have the burden of proving the existence of the alleged policies including the terms and conditions of the alleged policies and the identity of the insureds under the policies. Absent such proof, there can be no recovery.

FIFTH DEFENSE

To the extent that Third Party Plaintiffs have failed to comply with all of the policy terms and conditions, there may be no recovery under the alleged policies.

SIXTH DEFENSE

Third Party Plaintiffs have the burden of proving that each specific underlying claim comes within the scope of the alleged policies' insuring agreements before Industrial Indemnity and/or Westchester Fire can be held liable for the indemnification of Third Party Plaintiffs. To the extent that Third Party Plaintiffs cannot meet this burden of proof, the alleged policies do not owe any coverage for the particular claim.

SEVENTH DEFENSE

Third Party Plaintiffs are not entitled to coverage under the policies to the extent that any of the underlying claims do not constitute "bodily injury" during the policy period of any one or more of the alleged policies.

EIGHTH DEFENSE

Third Party Plaintiffs are not entitled to coverage under any of the alleged policies to the extent that the underlying claims do not constitute an "accident" or "occurrence" during the period of the policy.

NINTH DEFENSE

The alleged insurance policies require that the party seeking coverage provide timely notice of an alleged occurrence and timely notice of any resulting claim or lawsuit. To the extent Third Party Plaintiffs failed to provide timely notice of the underlying claims, coverage is barred under the alleged policies issued by Industrial Indemnity and Westchester Fire.

TENTH DEFENSE

To the extent that any of the underlying claims come within an applicable limitation to coverage or exclusion contained in the alleged policies, there is no coverage available.

ELEVENTH DEFENSE

The alleged policies do not apply to “bodily injury” taking place or resulting outside of the applicable policy periods. Third Party Plaintiffs have the burden of proving what, if any, “bodily injury” took place or resulted during the policy period.

TWELFTH DEFENSE

There is no coverage to the extent Third Party Plaintiffs have made voluntary payments, entered into voluntary settlements or made other payments without the consent of Industrial Indemnity and/or Westchester Fire.

THIRTEENTH DEFENSE

There is no coverage to the extent that Third Party Plaintiffs failed to cooperate with Industrial Indemnity and/or Westchester Fire.

FOURTEENTH DEFENSE

There is no coverage to the extent that the underlying claims or losses involved, are, or result from the imposition of civil or other fines, penalties, or punitive or exemplary damages or payment for willful or intentional acts committed by or at the direction or at the instigation of Third Party Plaintiffs or any of the agents or employees of Third Party Plaintiffs.

FIFTEENTH DEFENSE

There is no coverage to the extent that Third Party Plaintiffs contractually or voluntarily assumed liability associated with the underlying claims.

SIXTEENTH DEFENSE

There is no coverage to the extent that any “bodily injury” was expected or intended by Third Party Plaintiffs or was otherwise non-fortuitous, including but not limited to costs to comply with requirements, statutes, or regulations governing Third Party Plaintiffs’ business operations.

SEVENTEENTH DEFENSE

There is no coverage to the extent that the underlying claims do not constitute a legal liability to pay "damages" or do not involve a "suit" within the meaning of the alleged policies.

EIGHTEENTH DEFENSE

Industrial Indemnity and Westchester Fire have no obligation to defend any claim, proceeding or suit under the terms of any of the alleged excess policies.

NINETEENTH DEFENSE

To the extent that any of the underlying claims involve a loss that was or should have been known to Third Party Plaintiffs at or prior to the inception of the alleged policy, the known loss doctrine and/or loss in progress doctrine precludes coverage.

TWENTIETH DEFENSE

To the extent it is determined that Third Party Plaintiffs or any alleged predecessors misrepresented, failed to disclose, or omitted material facts regarding their acts, practices or conditions, or other material information, in connection with any application for insurance in connection with the issuance or renewal of the alleged policies, the claims may be barred in whole or in part.

TWENTY-FIRST DEFENSE

To the extent it is determined that Third Party Plaintiffs misrepresented, failed to disclose or omitted facts regarding their acts, practices or conditions, or other material information, in connection with their submission of any of the underlying claims to Industrial Indemnity or Westchester Fire in connection with Third Party Plaintiffs' request for payment by Industrial Indemnity and/or Westchester Fire under the alleged policies, the claims may be barred in whole or in part, and Industrial Indemnity and/or Westchester Fire may be entitled to relief under the applicable insurance fraud statutes.

TWENTY-SECOND DEFENSE

Third Party Plaintiffs' claims may be barred in whole or in part to the extent that Third Party Plaintiffs impaired or prejudiced any rights of subrogation, indemnification or contribution that Industrial Indemnity and/or Westchester Fire may have or have had.

TWENTY-THIRD DEFENSE

Third Party Plaintiffs' claims against Industrial Indemnity and/or Westchester Fire are or may be, barred by laches, waiver, estoppel and/or the applicable statutes of limitations.

TWENTY-FOURTH DEFENSE

To the extent any of the alleged policies of insurance allegedly issued by Industrial Indemnity and/or Westchester Fire contain an "other insurance" provision, the underlying claims may be barred in whole or in part to the extent that Third Party Plaintiffs failed to comply with the "other insurance" provision or otherwise by the terms and conditions of such provision.

TWENTY-FIFTH DEFENSE

Third Party Plaintiffs may be self-insured, uninsured or under insured for certain periods and therefore may be required to participate in the payment of costs, expenses, fees and other sums at issue in this action.

TWENTY-SIXTH DEFENSE

Third Party Plaintiffs' rights and claims against Industrial Indemnity and Westchester Fire, if any, are barred by the doctrine of unclean hands.

TWENTY-SEVENTH DEFENSE

Third Party Plaintiffs' rights and claims against Industrial Indemnity, if any, are subject, in whole or in part, to the stated limits of liability contained in the policies of insurance. The stated limits of liability contained in the alleged policies of insurance

include any self-insured retentions or deductibles contained in the alleged policies of insurance and the limit of liability underlying the alleged excess policies including underlying primary, umbrella and excess policies.

TWENTY-EIGHTH DEFENSE

Third Party Plaintiffs' claims are barred by their failure to take reasonable measures to mitigate damages.

TWENTY-NINTH DEFENSE

Third Party Plaintiffs' claims are barred to the extent it is against public policy to provide insurance coverage for the matters at issue in the underlying litigation.

THIRTIETH DEFENSE

Industrial Indemnity and Westchester Fire are entitled to the proper application of any deductible, retention, or premium adjustment required under the alleged policies and/or any loss-sensitive programs that may be applicable.

THIRTY-FIRST DEFENSE

Third Party Plaintiffs' claims are barred, in whole or in part, to the extent that any "bodily injury" for which Plaintiffs may be found liable with respect to any of the underlying claims asserted against them and referenced in the Second Amended Third Party Complaint took place outside of the effective policy period, either before inception or after expiration, of the alleged policies of insurance issued by Industrial Indemnity and Westchester Fire.

THIRTY-SECOND DEFENSE

Third Party Plaintiffs have the burden of proving that all underlying or lower-layer coverage, SIRs, and/or deductibles have been exhausted or satisfied, and Third Party Plaintiffs claims are barred to the extent Third Party Plaintiffs' claims fall within any

underlying or lower-layer coverage, SIRs, or deductibles or to the extent such coverage, SIRs, or deductibles are not exhausted or satisfied.

THIRTY-THIRD DEFENSE

It is Third Party Plaintiffs' burden to prove that each cause of action or claim asserted by the Third Party Plaintiffs in the underlying claims is covered by the alleged policies. Should it be determined that some of the causes of action or claims are covered, but not all causes of action or claims are covered, under the alleged policies, Industrial Indemnity and Westchester Fire are entitled to apportionment of the loss between covered and non-covered claims.

THIRTY-FOURTH DEFENSE

To the extent that there may be any requirement to pay defense costs with respect to any of the underlying claims under any particular alleged policy, Industrial Indemnity and Westchester Fire are only required to pay reasonable and necessary defense costs.

THIRTY-FIFTH DEFENSE

Third Party Plaintiffs lack standing to assert a claim for coverage under the alleged policies.

THIRTY-SIXTH DEFENSE

Third Party Plaintiffs' claims are not ripe for adjudication and do not otherwise present a justiciable controversy with respect to the alleged policies.

THIRTY-SEVENTH DEFENSE

Third Party Plaintiffs have the burden of proving that a contractual obligation exists between Third Party Plaintiffs and Industrial Indemnity and/or Westchester Fire. To the extent no privity of contract exists, Industrial Indemnity and Westchester Fire have no duty or obligations to Plaintiffs.

THIRTY-EIGHTH DEFENSE

Industrial Indemnity's and Westchester Fire's coverage obligations, if any, are limited to "ultimate net loss" as that term is defined or used in any of the alleged policies.

THIRTY-NINTH DEFENSE

Industrial Indemnity's and Westchester Fire's coverage obligations, if any, are limited to their appropriate pro rata share(s), after application of all underlying or lower-layer coverage, SIRs, and or deductibles.

FORTIETH DEFENSE

Industrial Indemnity's and Westchester Fire's policies do not extend coverage to after-acquired companies or after-acquired liabilities.

FORTY-FIRST DEFENSE

The alleged policies do not provide coverage in the place of other insurance that is or becomes invalid, uncollectible, or otherwise unavailable due to the insolvency of the underlying insurer or the action or inaction of others.

FORTY-SECOND DEFENSE

Third Party Plaintiffs' claims against Industrial Indemnity and Westchester Fire may be barred by the doctrines of res judicata, collateral estoppel, judicial estoppel and/or issue preclusion.

FORTY-THIRD DEFENSE

Third Party Plaintiffs' claims are barred to the extent that claims made in the underlying litigation arise out of a civil conspiracy, concert of action, or other intentional tortious conduct.

FORTY-FOURTH DEFENSE

The claims are barred to the extent the claims made in the underlying litigation are for "bodily injury" arising out of Third Party Plaintiffs' or their alleged predecessors' products or any part of their products.

FORTY-FIFTH DEFENSE

The claims are barred to the extent that the underlying claims are for loss of use because of the failure of Third Party Plaintiffs' or their alleged predecessors' products to adequately perform as intended.

FORTY-SIXTH DEFENSE

Third Party Plaintiffs have failed to include the original or a copy of the written instruments upon which the Second Amended Third Party Complaint is founded including the insurance policies referenced. Therefore, Plaintiffs' Second Amended Third Party Complaint is defective and should be dismissed.

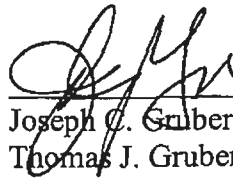
FORTY-SEVENTH DEFENSE

Industrial Indemnity and Westchester Fire hereby reserve the right to assert additional defenses upon further development and elaboration of Third Party Plaintiffs' claims, upon further discovery concerning the provisions, terms, conditions and exclusions of the alleged policies of insurance under which Third Party Plaintiffs claim coverage, and upon the discovery of further information with respect to the underlying claims.

* * * * *

WHEREFORE, Industrial Underwriters and Westchester Fire demand that judgment be entered in this action dismissing Third Party Plaintiffs' Second Amended Third Party Complaint with prejudice, declaring that any and all underlying claims against Third Party Plaintiffs are not covered by the alleged policies issued by Industrial Indemnity and Westchester Fire, and awarding Industrial Indemnity and Westchester Fire their costs

and reasonable attorneys fees and such further relief in law or in equity as the Court deems appropriate.



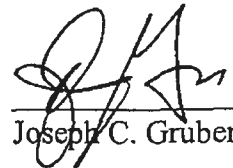
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JURY DEMAND

Third Party Defendants Industrial Indemnity and Westchester Fire hereby demand a trial by jury.



Joseph C. Gruber

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Jury Demand of Industrial Indemnity and Westchester Fire to Second Amended Third Party Complaint was served this 28th day of November, 2007, upon the following:

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By: 